



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

July 6, 2020
SPR20/1059

Shawn A. Williams, Esq.
Director of Public Records
Records Access Officer
City of Boston
1 City Hall Plaza, Room 615
Boston, MA 02201

Dear Attorney Williams:

I have received your petition on behalf of the City of Boston (City) requesting an extension of time to produce records and permission to charge for time spent segregating or redacting responsive records. G. L. c. 66, § 10(c); G. L. c. 66, § 10(d)(iv). As required by law, the City furnished a copy of this petition to the requestor. G. L. c. 66, § 10(c). Specifically, on June 16, 2020, J Ader requested, “[a]ll internal notes, memos, bulletins, alerts, and emails created and/or received from 5/27/2020 to 6/12/2020 containing/mentioning:

- #ICantBreathe
- Icantbreathe
- I Can't Breathe
- George Floyd
- #GeorgeFloyd
- Derek Chauvin
- #DerekChauvin
- #JusticeforFloyd
- Justice for Floyd
- #JusticeforGeorge
- #BlackLivesMatter
- #BLM
- Black Lives Matter.”

Petitions for an Extension of Time

Under the Public Records Law, upon a showing of good cause, the Supervisor of Records (Supervisor) may grant a single extension to an agency not to exceed 20 business days and a single extension to a municipality not to exceed 30 business days. In determining whether there has been a showing of good cause, the Supervisor shall consider, but shall not be limited to considering:

- (i) the need to search for, collect, segregate or examine records;
- (ii) the scope of redaction required to prevent unlawful disclosure;
- (iii) the capacity or the normal business hours of operation of the agency or municipality to produce the request without the extension;
- (iv) efforts undertaken by the agency or municipality in fulfilling the current request and previous requests;
- (v) whether the request, either individually or as part of a series of requests from the same requestor, is frivolous or intended to harass or intimidate the agency or municipality; and
- (vi) the public interest served by expeditious disclosure.

G. L. c. 66, § 10(c).

If the Supervisor determines that the request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the Supervisor may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought. Id.

The filing of a petition does not affect the requirement that a Records Access Officer (RAO) shall provide an initial response to a requestor within ten business days after receipt of a request for public records. 950 C.M.R. 36.06(4)(b).

Petition to Assess Fees

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records (Supervisor) under a petition under G. L. c. 66, § 10 (d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve a municipality's petition to allow the municipality to charge for time spent segregating or redacting records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv). It is my determination that this request was not made for a commercial purpose.

The second prong of the test is whether the fee represents an actual and good faith representation by the municipality to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. Id.

Petitions seeking a waiver of statutory limits to fees assessed to segregate and/or redact public records must be made within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(g).

Fee Estimates

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Municipalities may not assess a fee for the first two hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce a record requested, but the fee shall not be more than \$25 per hour. Id. However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv).

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4). Petitions relating to fees must be submitted to the Supervisor within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(g).

Current Petition

In its June 30, 2020 petition, the City states, "I ask the Supervisor to permit the City to assess a fee for the provision of records responsive to [J Ader's] request...This letter also

petitions the Supervisor to permit the City additional time needed to comply with [J Ader's] request."

The City explains, "[t]he key words provided are common terms that would likely yield a high volume of records that would need review. Government records custodians are permitted to redact or withhold portions of public records, so long as a specific exemption to the law is cited. See G. L. c. 4, § 7 (26). Portions of records responsive to [J Ader's] request may contain information that is exempt from disclosure. Until a review of the records is conducted it is not clear what if any exemptions may apply to permit or require redaction or withholding."

Conclusion

I find that the City has established good cause to permit an extension of time. See G. L. c. 66, § 10(c)(i)-(iv). I hereby grant the City an extension of 15 business days to furnish copies of records responsive to J Ader's request. See G. L. c. 66, § 10(c). The City is advised it must provide the records in a manner consistent with the Public Records Law and its Access Regulations. To the extent possible, the City must provide responsive records on a rolling basis.

With respect to the City's petition to assess fees, based on the petition provided, it is unclear whether a timely fee petition was filed. Further, I find the City has not met its burden to explain how the request could not prudently be completed without segregation or redaction. Accordingly, I am unable to opine on the City's petition to charge fees at this time. See G.L. c. 66, § 10 (d)(iv) ; 950 C.M.R. 32.06(4)(g).

Please note, J Ader has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, § 10(d)(iv)(4), 10A(c).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive, flowing style.

Rebecca S. Murray
Supervisor of Records

cc: J Ader